



U.S. DEPARTMENT OF HOMELAND SECURITY **OFFICE OF INSPECTOR GENERAL**

OIG-24-49

September 3, 2024

FINAL REPORT

CBP Needs to Improve Its Oversight and Monitoring of Penalty Cases





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U.S. Department of Homeland Security

Washington, DC 20528 | www.oig.dhs.gov

September 3, 2024

MEMORANDUM FOR: Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

FROM: Joseph V. Cuffari, Ph.D. **JOSEPH V CUFFARI** Digitally signed by
Inspector General **CUFFARI** JOSEPH V CUFFARI
Date: 2024.09.03
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SUBJECT: *CBP Needs to Improve Its Oversight and Monitoring of Penalty Cases*

Attached for your action is our final report, *CBP Needs to Improve Its Oversight and Monitoring of Penalty Cases*. We incorporated the formal comments provided by your office.

The report contains two recommendations aimed at improving CBP's oversight and monitoring of the penalty case process. Your office concurred with both recommendations.

Based on information provided in your response to the draft report, we consider both recommendations open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGAuditsFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please contact me with any questions, or your staff may contact Kristen Bernard, Deputy Inspector General, Office of Audits, at (202) 981-6000.

Attachment



DHS OIG HIGHLIGHTS

CBP Needs to Improve Its Oversight and Monitoring of Penalty Cases

September 3, 2024

Why We Did This Audit

CBP is the second-largest revenue collection agency in the Federal Government. To protect revenue, CBP assesses and collects fines and penalties from importers who are noncompliant with trade laws. In a prior audit, we identified potential lost revenue totaling \$858 million stemming from 152 penalty cases with an “open” status.

We conducted this audit to determine to what extent CBP has lost revenue due to expired statute of limitations under Title 19 of the United States Code, section 1621, *Limitation of actions*.

What We Recommend

We made two recommendations to improve CBP’s oversight and monitoring of penalty cases.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at: DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Found

From our limited testing, we did not identify a systemic issue in which U.S. Customs and Border Protection (CBP) lost revenue due to expired statute of limitations. We reviewed 152 penalty cases, totaling \$858.1 million, and determined that 144 (95 percent) were either closed, settled, in litigation, or submitted to the Treasury Offset Program. The statute of limitations no longer applied to these cases. The remaining eight penalty cases, totaling \$1.5 million (0.2 percent) had expired and were subsequently closed. However, this does not equate to \$1.5 million in lost revenue because CBP is allowed to close cases, for example, when the cost of continuing to pursue the case would exceed the potential amount to be recovered.

To assess CBP’s penalty case process, we evaluated CBP’s oversight and monitoring functions, which included reviewing related policies and procedures. Despite not identifying lost revenue due to expired statute of limitations, we found CBP did not maintain effective oversight of penalty cases, which may hinder CBP’s ability to collect revenue in these instances.

Additionally, CBP guidance requires headquarters to conduct oversight surveys of at least 2 of its 42 Fines, Penalties, and Forfeitures field offices each fiscal year. However, given the number of field offices, if CBP conducted only the required minimum two surveys per year, 21 years could pass between surveys for each field office. Without routine field office surveys, CBP cannot ensure it effectively monitors field office compliance with established standards related to the penalty case process.

CBP Response

CBP concurred with both recommendations. We consider both recommendations resolved and open.



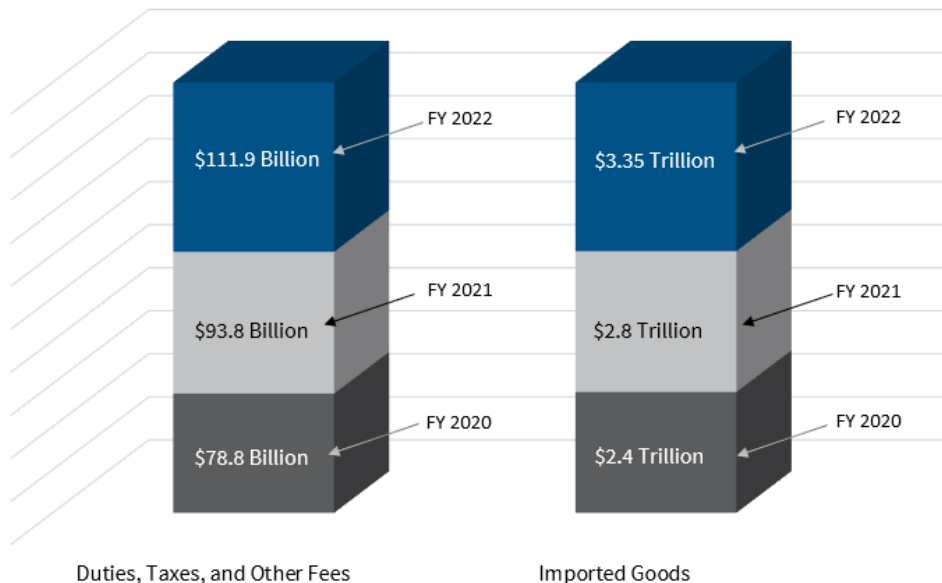
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Background

Within the Department of Homeland Security, U.S. Customs and Border Protection (CBP) is responsible for securing our Nation’s borders while facilitating legal travel and trade. CBP is the second-largest revenue collection agency in the Federal Government. According to the *CBP Trade and Travel Report Fiscal Year 2022*, it collected approximately \$111.9 billion in duties, taxes, and other fees and processed over \$3.35 trillion in imported goods in fiscal year 2022. As shown in Figure 1, collected revenue, and imported goods have significantly increased from FY 2020 through FY 2022.

Figure 1. CBP’s Collected Revenue and Imports for FY 2020 – FY 2022



Source: DHS Office of Inspector General’s analysis of CBP’s Trade and Travel Reports

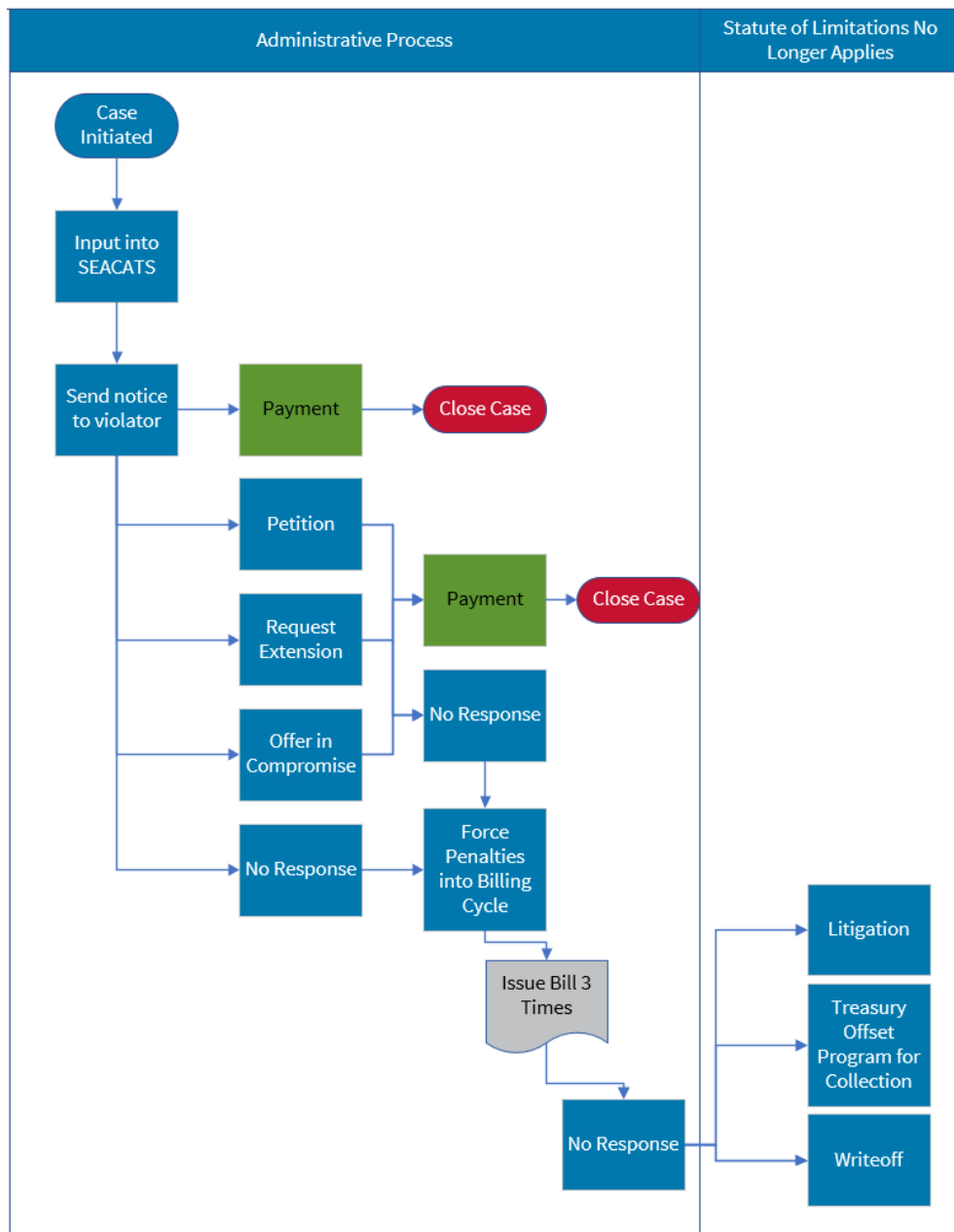
Revenue collection focuses on enforcing customs and trade laws; facilitating legitimate trade; and collecting lawfully owed duties, taxes, and fees. However, importers may illicitly attempt to avoid paying duties, taxes, and fees and circumvent trade practices, defrauding the Federal Government and undermining lawful business. To protect revenue, CBP assesses and collects fines and penalties from noncompliant importers. CBP’s Office of Field Operations is responsible for border security, trade, and travel facilitation at U.S. ports of entry.

CBP uses the Seized Assets and Case Tracking System (SEACATS) to capture relevant information about penalty cases, including the legal outcomes of all fines and penalties. SEACATS also serves as the financial system of record for all collections related to these enforcement actions. See Figure 2 for a simplified depiction of CBP’s penalty process.



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Figure 2. Simplified Depiction of CBP’s Penalty Process



Source: DHS OIG analysis and interviews with CBP personnel

Pursuant to 19 United States Code (U.S.C.) §1621, CBP has 5 years from the date it discovers a violation, or 5 years from the date the violation occurred, with certain exceptions, to attempt to collect fines and penalties from noncompliant importers. CBP performs numerous actions during the administrative process to collect penalties before the statute of limitations expires.



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According to CBP guidance,¹ a statute of limitations waiver can be obtained to extend the administrative process for a minimum of 2 years. These waivers should not delay the processing of the case because the longer the case takes to process, the less likely fines and penalties will be fully recovered.

CBP can collect penalties for cases in certain circumstances indefinitely.

If a penalty is not collected during the administrative process, CBP can refer the case for litigation to the U.S. Department of Justice (DOJ) or submit it for collection to the Treasury Offset Program. DOJ may file a complaint in the Court of International Trade or other appropriate Federal court. The Treasury Offset Program intercepts a corporation or individual's Internal Revenue Service tax refund and uses it to pay down the delinquent debt.

Once CBP refers a penalty case to the U.S. Department of the Treasury for collection, the statute of limitations no longer applies to that case, and CBP can collect on the assessed penalty indefinitely. If CBP refers a penalty case to DOJ for litigation and a complaint is filed, the statute of limitations no longer applies to that case. Further, 19 U.S.C. §1621 includes additional reasons for why a penalty case's statute of limitations may be paused or extended.

We initiated this audit as a result of observations contained in a prior DHS OIG report on CBP's Centers of Excellence and Expertise (OIG 22-34),² which identified potential lost revenue totaling \$858 million.³ This stemmed from 152 penalty cases with an "open" status in SEACATS where the statute of limitations appeared to have expired. We conducted this follow-up audit to determine to what extent CBP has lost revenue due to expired statute of limitations under 19 U.S.C. §1621, *Limitation of actions*.

Results of Audit

CBP's Oversight and Monitoring of Penalty Cases Was Not Effective

From our limited testing, we did not identify a systemic issue in which CBP lost revenue due to expired statute of limitations. Despite not identifying lost revenue due to expired statute of limitations, we found CBP did not maintain effective oversight of penalty cases which may hinder CBP's ability to collect revenue in these instances.

¹ *Seized Asset Management and Enforcement Procedures Handbook*, July 2011.

² *CBP Needs Improved Oversight for Its Centers of Excellence and Expertise*, OIG-22-34, March 31, 2022.

³ The original data reflects \$858.1 million in potential lost revenue. The OIG-22-34 report rounded to \$858 million for reporting purposes.



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Potential Lost Revenue Was Not Identified

We reviewed the 152 penalty cases, totaling \$858.1 million, previously identified as having expired statutes of limitations. CBP opened these 152 penalty cases during FYs 2014, 2015, and 2016, with 72 cases opened (47 percent) in 2014.

We were unable to identify lost revenue because we did not determine if the penalty amounts were accurate. To do so, we would have to audit the initial assessed penalty from nearly 10 years ago to determine if the penalty was accurately calculated, then review 6-10 years of the penalty process. Reviewing the nearly 10 years of penalty process is complex because of the legal expertise and amount of time needed to conduct an extensive review of the vast amount of associated SEACATS documentation. We encountered cases that had been in the penalty case process for more than a decade due to the multiple external parties involved including DOJ handling the litigation and the U.S. Department of the Treasury assisting in collecting outstanding penalties.

We reviewed the individual case histories for the 152 cases selected and determined that 144 penalty cases (or 95 percent) totaling \$856.6 million were either closed,⁴ settled by DOJ, in litigation, referred, or submitted to the Treasury Offset Program. Therefore, the statute of limitations no longer applies to these 144 cases, and CBP may have already collected or could still potentially collect penalties via the Treasury offset or litigation. The remaining eight penalty cases, totaling \$1.5 million (0.2 percent) had expired and were subsequently closed. Figure 3 depicts the 152 penalty cases grouped by status according to our analysis.

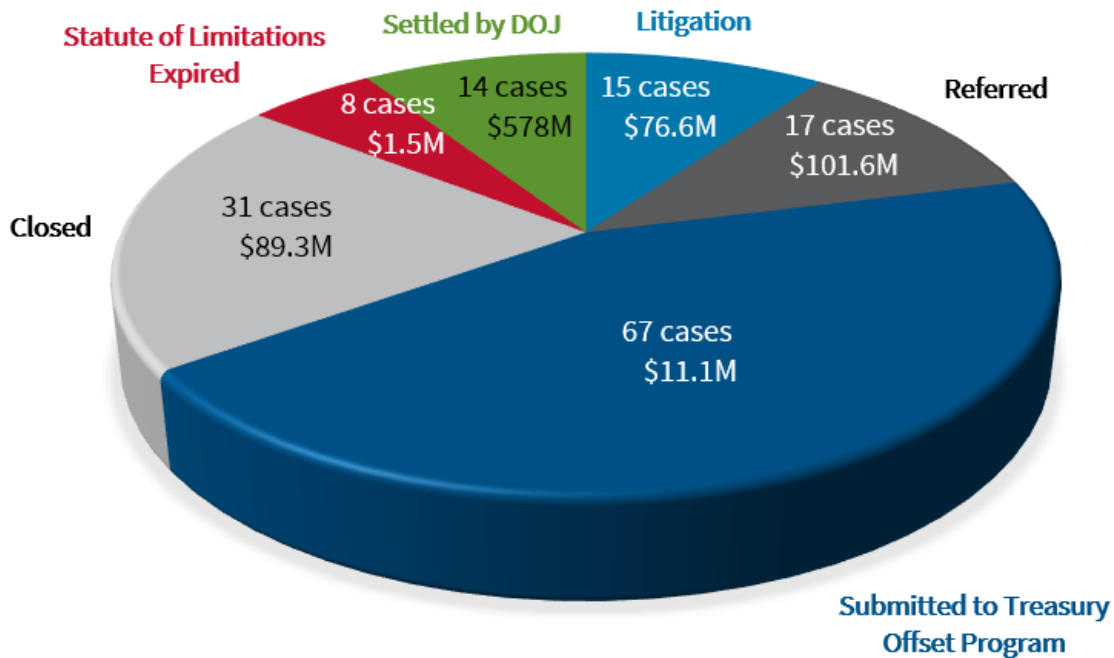
⁴ The “closed” status includes cases that may have been resolved through an offer in compromise, which indicates the violator settled their claim for an amount less than the assessed penalty.



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Figure 3. OIG 22-34 Penalty Cases Grouped by Status



Source: DHS OIG analysis of SEACATS data provided by CBP

The \$1.5 million in closed cases does not equate to lost revenue because CBP is allowed to close cases for various reasons beyond CBP's control. For example, CBP's guidance indicates cases can be closed if the debtor cannot be located, if the cost of continuing to pursue the case would exceed the potential amount to be recovered, or if the claim is not substantiated by evidence. Based on the data we received from CBP, we could not determine the specific reasons why the eight cases were closed as an extensive legal review would have been necessary to gain further insight.

CBP Could Improve Oversight and Monitoring of Penalty Cases

To assess CBP's penalty case process, we evaluated CBP's oversight and monitoring functions, which included reviewing related policies and procedures. Per the U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*, ongoing monitoring includes regular management and supervisory activities, comparisons, reconciliations, and other routine actions. Additionally, per OMB Circular A-123, as part of an agency's responsibility, it should maintain policies, procedures, and mechanisms to help ensure that it meets its program objectives.

We found CBP did not maintain effective oversight of penalty cases. According to CBP guidance, field personnel should identify and monitor penalty cases that may be nearing expiration. To do



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so, CBP can use information⁵ contained in its system of record, SEACATS, to generate monthly statute of limitations reports. Field personnel are responsible for reviewing these reports to identify and monitor penalty cases that may be nearing expiration. If a penalty case has less than 2 years remaining on the statute, CBP personnel should request a statute of limitations waiver. However, CBP guidance does not require field personnel to communicate the results of their analysis to headquarters.⁶ As a result, headquarters may not be aware of penalty cases nearing expiration, which may hinder CBP's ability to collect revenue in these instances.

Additionally, CBP guidance requires headquarters to conduct oversight surveys of at least 2 of its 42 Fines, Penalties, and Forfeitures field offices each fiscal year. In each oversight survey, Headquarters should review the field office's use of SEACATS reports, including the statute of limitations report, to assess whether cases are processed consistently, acknowledge best practices, and measure compliance with standards. However, given the number of field offices, if CBP conducted only the required minimum two surveys per year, 21 years could pass between surveys for each field office. We reviewed the oversight surveys CBP previously conducted and found that three field offices have not been surveyed since 2010. Additionally, we found that one field office had an unsatisfactory result in 2014, and another field office had an unsatisfactory result in 2015. CBP has not yet conducted follow-up surveys to determine whether the field offices addressed the identified deficiencies. Without routine field office surveys, CBP cannot ensure it effectively monitors field office compliance with established standards related to the penalty case process.

Recommendations

Recommendation 1: We recommend that the Executive Assistant Commissioner of CBP's Office of Field Operations develop and implement a plan to ensure effective oversight and monitoring by assessing the results of the monthly statute of limitations report reviews from the Fines, Penalties, and Forfeitures field offices.

Recommendation 2: We recommend that the Executive Assistant Commissioner of CBP's Office of Field Operations implement a plan to ensure effective oversight and monitoring by increasing the frequency of oversight surveys of Fines, Penalties, and Forfeitures field offices. This includes establishing a plan to follow up with field offices with unsatisfactory survey results in a timely manner.

⁵ SEACATS information CBP can use to generate reports includes real-time information to inform legislation and improve the efficiency of enforcement programs.

⁶ CBP's Fines, Penalties, and Forfeitures Division is responsible for developing, monitoring, and enforcing policies and procedures related to penalties.



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Management Comments and OIG Analysis

CBP provided management comments on a draft of this report. We included the comments in their entirety in Appendix B. We also received technical comments from CBP on the draft report, and we revised the report as appropriate. CBP concurred with both recommendations, which we consider open and resolved. A summary of CBP's response and our analysis follows.

CBP Response to Recommendation 1: Concur. Fines, Penalties, and Forfeitures Division (FPFD) Headquarters, Office of Field Operations (OFO) will issue a memorandum to the OFO field offices to implement policy guidance for oversight of the field's statute of limitations reports annually. The Seized Asset Management and Enforcement Procedures Handbook will be updated with any related policy changes/updates and posted in SEACATS and OFO's internal SharePoint site so that it is readily available to applicable CBP personnel. Estimated Completion Date: December 31, 2024.

OIG Analysis: We consider CBP's actions responsive to the recommendation, which is resolved and open. The recommendation will remain open until CBP provides updated policy guidance and implements oversight of the statute of limitations reports.

CBP Response to Recommendation 2: Concur. In addition to the current CBP monthly review requirements for the statute of limitations report by both the port and field office levels, FPFD presently conducts a minimum of two surveys each year reviewing the Fines, Penalties, and Forfeitures office case processing. Going forward, OFO will issue updated policy guidance to include an increase in the number of oversight surveys, program expectations, composition of survey review team, and follow up actions required by the ports, field offices, and FPFD. For reviews where unsatisfactory conditions are identified, FPFD will conduct another review no sooner than 12 months and no later than 24 months from the date of the unsatisfactory rating notification to allow time for the corrective actions to be implemented and properly assessed. The Seized Asset Management and Enforcement Procedures Handbook will be updated to provide policy changes to this Fines, Penalties, and Forfeitures survey process. Estimated Completion Date: December 31, 2024.

OIG Analysis: We consider CBP's actions responsive to the recommendation, which is resolved and open. The recommendation will remain open until CBP provides updated guidance increasing the frequency of oversight surveys and follow up on unsatisfactory survey results.



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Appendix A: Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Pub. L. No. 107–296) by amendment to the *Inspector General Act of 1978*.

We conducted this audit to determine to what extent CBP has lost revenue due to expired statute of limitations under 19 U.S.C. §1621, *Limitation of actions*. This audit was initiated as a result of observations contained in OIG 22-34, which identified 152 penalty cases that appeared to have expired resulting in potential lost revenue. During this audit, we assessed the status of those cases. To answer our objective, we reviewed and analyzed Federal laws and regulations, policies, procedures, and prior DHS OIG reports related to CBP’s penalty process. We held virtual meetings and interviews to answer our audit objective and substantiate conclusions made throughout the audit.

To assess CBP’s internal controls related to compliance with laws and regulations, we met with personnel from CBP’s OFO; Office of Finance; and FPPD. Because we limited our review to these internal control components and underlying principles, we may not have identified all internal control deficiencies that may have existed at the time of this audit. We did identify a weakness in oversight and monitoring of penalty cases, as discussed in the body of this report.

We conducted interviews to gain a better understanding of CBP’s penalty process. We evaluated CBP’s roles and responsibilities regarding SEACATS. This included interviewing personnel at various CBP offices, conducting virtual walkthroughs of the system to understand how CBP personnel capture data, and reviewing relevant standard operating procedures. We requested the updated case status and case history for the 152 penalty cases noted in OIG-22-34; SEACATS indicated these cases had a total of \$858.1 million in uncollected penalties. (The universe of penalty cases for OIG-22-34 was 16,293 cases, totaling \$2.5 billion.) Our methodology included reviewing the case history to determine the statuses of these cases and whether the statute of limitations for them had expired.

We assessed the reliability of SEACATS data by performing electronic testing, reviewing existing information about the data and the system that produced it, and interviewing agency officials knowledgeable about the data. We determined the data to be sufficiently reliable for our audit findings, conclusions, and recommendations related to our audit objective.

We conducted this audit from May 2023 through May 2024 pursuant to the *Inspector General Act of 1978*, 5 U.S.C. §§ 401–424, and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on



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our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

DHS OIG's Access to DHS Information

During this audit, CBP provided timely responses to our requests for information and did not delay or deny access to information we requested.



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Appendix B: CBP Comments on the Draft Report

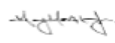
1300 Pennsylvania Avenue, NW
Washington, DC 20229



U.S. Customs and
Border Protection

July 3, 2024

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr. 
Senior Component Accountable Official
U.S. Customs and Border Protection

7/3/2024

SUBJECT: Management Response to Draft Report: “CBP Needs to
Improve Its Oversight and Monitoring of Penalty Cases”
(Project No. 23-031-AUD-CBP)

Thank you for the opportunity to comment on this draft report. U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP is pleased to note that the OIG’s review did not identify a systemic issue with CBP lost revenue due to expired statute of limitations. OIG also assessed the reliability of CBP’s SEACATS data by performing electronic testing, reviewing existing information and the system that produced it, and interviewing agency officials knowledgeable about the data. Based on this research, OIG determined that the data was sufficiently reliable for their audit findings, conclusions, and recommendations related to this audit objective.

The draft report contained two recommendations with which CBP concurs. Enclosed find our detailed response to each recommendation. CBP previously submitted technical comments addressing several accuracy, contextual and other issues under a separate cover for OIG’s consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Enclosure



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Enclosure: Management Response to Recommendations Contained in 23-031-AUD-CBP

OIG recommended that Executive Assistant Commissioner of CBP's Office of Field Operations:

Recommendation 1: Develop and implement a plan to ensure effective oversight and monitoring by assessing the results of the monthly statute of limitations report reviews from the Fines, Penalties, and Forfeitures field offices.

Response: Concur. Fines, Penalties and Forfeitures Division (FPFD) Headquarters, Office of Field Operations (OFO) will issue a memorandum to the OFO field offices to implement policy guidance for oversight of the field's statute of limitations reports annually. The Seized Asset Management and Enforcement Procedures Handbook (SAMEPH) will be updated with any related policy changes/updates and posted in SEACATS and OFO's internal SharePoint site so that it is readily available to applicable CBP personnel. Estimated Completion Date (ECD): December 31, 2024.

Recommendation 2: Implement a plan to ensure effective oversight and monitoring by increasing the frequency of oversight surveys of Fines, Penalties, and Forfeitures field offices. This includes establishing a plan to follow up with field offices with unsatisfactory survey results in a timely manner.

Response: Concur. In addition to the current CBP monthly review requirements for the statute of limitations report by both the port and field office levels, FPFD presently conducts a minimum of two surveys each year reviewing the Fines, Penalties and Forfeitures (FPF) office case processing. Going forward, OFO will issue updated policy guidance to include an increase in the number of oversight surveys, program expectations, composition of survey review team and follow up actions required by the ports, field offices, and FPFD. For reviews where unsatisfactory conditions are identified, FPFD will conduct another review no sooner than 12 months and no later than 24 months from the date of the unsatisfactory rating notification to allow time for the corrective actions to be implemented and properly assessed. The SAMEPH will be updated to provide policy changes to this FPF survey process. ECD: December 31, 2024.



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Appendix C: Report Distribution

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